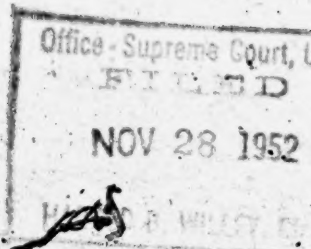


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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 391

HARRY A. STEIN,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF NEW YORK

**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE
OF NEW YORK**

PETITIONER'S BRIEF

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SUPREME COURT OF THE UNITED STATES

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HARRY A. STEIN,

Petitioner,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE
OF NEW YORK

PETITIONER'S BRIEF

Statement

On December 21, 1950, petitioner, together with Calman Cooper and Nathan Wissner, whose briefs are being submitted separately, was convicted in the County Court of Westchester County of the State of New York of the crime of murder in the first degree, after a joint jury trial upon an indictment charging a "felony murder" under subd. 2 of Sec. 1044 of the Penal Law of the State of New York (set forth in the Appendix to this brief). The judgment of

conviction, entered December 27, 1950, sentenced the defendants to death. One Benny Dorfman was named as a defendant in the indictment, but his trial was severed, on motion of the District Attorney, and he testified for the prosecution (R. 8-11) ¹. The judgment of conviction, as to all three defendants, was affirmed by the New York Court of Appeals, without opinion, on March 6, 1952 (303 N.Y. 856). A stay of execution, as to all three petitioners, was granted by Order of Mr. Justice Jackson, dated April 7, 1952.

Jurisdiction

The jurisdiction of this Court is invoked under Title 28 U.S.C., Sec. 1257, this being a proceeding to review the final judgment of the Court of Appeals of the State of New York, the State court of last resort in which a decision could be had.

In said Court of Appeals petitioner especially set up and claimed, under the Fourteenth Article of Amendment of the Constitution of the United States, the right, privilege and immunity against being deprived by the State of New York of his rights, life and liberty, without due process of law, through the introduction in evidence of petitioner's written confession and alleged oral statements. As certified by said Court of Appeals (303 N.Y. 982), this point was "presented and necessarily passed upon by this Court" (Order Amending Remittitur, dated April 18, 1952), the point having been specifically presented in the brief and reply brief on behalf of petitioner, on the oral argument of the appeal from the judgment of conviction, and by adequate and timely objection and exception at every stage of the trial.²

¹ Numerals thus indicated refer to the pages of the Record.

² For all such objections and exceptions, see R. 460, 228-30, 1582-3, 1700, 1705, 1707-8, 1900, 1966-7, 1989-90, 1992, 1994, 2128, 2139-40, 2154, 2238, 2243.

A petition for writ of certiorari to review the judgment of the Court of Appeals affirming the judgment of conviction herein was filed in this Court by petitioner on June 2, 1952, under the authority of Title 28, U.S.C., Sec. 1257, and Rule 38 of the Rules of the Supreme Court of the United States. The petition was granted on October 13, 1952, as were the petitions for writs of certiorari of Calman Cooper and Nathan Wissner, "limited to the question as to the admissibility of the confessions".

Statement of the Case

On April 3, 1950, at about 3 P.M., on the private roadway leading from the Reader's Digest plant at Chappaqua, Westchester County, New York, four robbers held up a truck owned by the Reader's Digest Association, and escaped with three bags containing checks and currency, the property of the Reader's Digest Association (R. 204-5). The truck was being operated by William Waterbury, who was accompanied by a messenger, Andrew Petrini (R. 214). A single shot, fired by one of the robbers (R. 215), passed from the outside through the window glass of the right hand door of the truck, penetrated Petrini's head, and caused his death some hours later (R. 167, 171-2).

Just about two months later Cooper was arrested in the early morning of June 5th. (R. 1337), Stein was arrested at 2 A.M. on June 6th (R. 1958), and Wissner at 9 A.M. on June 7th (R. 1320, 1325), all in New York City. Each was taken, either within a matter of hours after his arrest, as in the case of Cooper, or immediately thereafter, as in the cases of Stein and Wissner, to the Hawthorne Barracks of New York State Police, in Hawthorne, Westchester County, New York, where they were held, incommunicado, without being arraigned before a Magistrate, from the dates of their respective arrests until 10 P.M. on June 8th.

The Trial Court ruled as a matter of law that the delay in arraignment of the three defendants was unnecessary and illegal, being in violation of state statutes (Sec. 1844, Penal Law of the State of New York; Sec. 165 New York Code of Criminal Procedure, set forth in the Appendix to this brief).

The District Attorney of Westchester County testified that he became aware on the afternoon of June 6th that Cooper had been in custody since the morning of June 5th (R. 1225).

There was police testimony concerning petitioner's confession and alleged oral statements. A written confession of petitioner's signed at 4:30 P.M. on June 7th, was admitted in evidence (R. 1969-1981, 2897-2903, Respondent's Exhibit 64), as were certain prior and subsequent oral statements (R. 240-1, 1700, 1909, 1991, 2160-4, 2238), over objection and exception by petitioner, and objection was specifically made that the admission of said written confession and oral statements was a denial of due process under the Fourteenth Amendment of the Constitution of the United States.

Cooper signed a written confession (R. 2874-86), Exhibit 59) on June 6th, which was admitted in evidence over his objection and exception, his counsel raising the same specific Constitutional objection that its admission constituted a denial of federal due process. Wissner did not confess. Upon the trial his counsel objected to the reception in evidence of the Cooper and Stein confessions, on the grounds set forth in his petition for writ of certiorari herein.

Question Involved

The sole issue to be determined, as to this petitioner, is: Did the admission in evidence of petitioner's confession and prior and subsequent oral statements constitute a viola-

tion of the rights of petitioner under the due process clause of the Fourteenth Amendment of the Constitution of the United States?

Facts Relied Upon, In Chronological Sequence

Cooper's Arrest, Detention and Interrogation.

We consider it desirable, in fact indispensable to an understanding of the situation in its totality, to give some account of the events which preceded Cooper's confession, for it is in the case of that petitioner, the first to be arrested, that we see unfolding the pattern of conduct on the part of the State Police which it is claimed spawned the confessions in this case.

While in the company of his 65 year old father, early in the morning of June 5th, Cooper was arrested on the street outside his home in New York City, as was his father, by seven or eight Troopers of the New York State Police (R. 1337-8), accompanied by one Mulligan, a detective attached to the Borough of Manhattan Squad of the Police Department of the City of New York (R. 1310, 1956, 1965). They were taken to the East 67th Street Police Station, in New York City, the headquarters of the Borough of Manhattan Squad (R. 1957), where, though not booked (R. 1335-1341), they were kept, each of them handcuffed, until the State Troopers, around noon that same day, spirited them off to the Barracks of Troop K of the New York State Police, at Hawthorne, New York (R. 1311-36).

Later that day the State Troopers arrested a brother of the petitioner Cooper, and brought him to the same Hawthorne Barracks (R. 2040). All three Coopers were photographed and given separate criminal identification numbers (R. 2998-9, 3002, 3004, 3006). The aged father of Cooper was fingerprinted (R. 1372) and his pedigree taken (R. 2998). At no time was he questioned (R. 1368), or

APPENDIX I**Appellate Division, Second Department, Special Rules*****Improper publicizing of court proceedings.***

"The taking of photographs in a court room, during sessions of the court or during recesses between sessions, or the broadcasting of court proceedings, is forbidden. (Added April 20, 1938.)

APPENDIX J**Section 618 B of Code of Criminal Procedure,
State of New York**

Judge may order witness to enter into an undertaking for appearance or be committed on refusal to comply therewith.

"Whenever a judge of a court of record in this state is satisfied, by proof on oath, that a person residing or being in this state is a necessary and material witness for the people in a criminal action or proceeding pending in any of the courts of this state, he may, after an opportunity has been given to such person to appear before such judge and be heard in opposition thereto, order such person to enter into a written undertaking, with such sureties and in such sum as he may deem proper, to the effect that he will appear and testify at the court in which such action or proceeding may be heard or tried, and upon his neglect or refusal to comply with the order for that purpose, the judge must commit him to such place, other than a state prison, as he may deem proper, until he comply or be legally discharged."